

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-38479-2011(O&M)

Date of decision:-14.5.2018

Ujjagar Singh and others

...Petitioners

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MR. JUSTICE H.S. MADAAN

Present : Mr.S.K. Chawla, Advocate
for the petitioners.

Ms.Ruchika Sabharwal, AAG, Punjab.

Mr.A.P.S. Deol, Senior Advocate with
Mr.Vishal Rattan Lamba, Advocate &
Mr.Surinder Garg, Advocate
for respondents No.2 and 3.

H.S. MADAAN, J.

This petition under Section 482 Cr.P.C. has been filed by
petitioners Ujjagar Singh, Surjit Singh, Mukhtiar Singh, Sardara Singh
@ Saudagdar Singh, Nazar Singh, Jagjit Singh and Bahadur Singh
against State of Punjab, Balbir Kaur, Gurvinder Singh, Sub Divisional
Magistrate, Faridkot, SHO, Police Station, Kotkapura, District Faridkot

and Rajinder Kumar, Patwari Halqa, Sandhwan, District Faridkot for quashing of order dated 14.7.2010 passed by Sub-Divisional Magistrate, Faridkot vide which while allowing application, he has ordered the alleged receiver to hand over the possession of the land in dispute to the legal heirs – contesting respondents. The petitioners further pray for setting aside order passed by Sessions Judge, Faridkot vide which the revision petition filed by the petitioners has been dismissed and order passed by Sub Divisional Magistrate, Faridkot has been upheld.

Inter alia, in the petition, it is contended that one Smt.Kartar Kaur widow of Karam Singh, resident of village Sandhwan was owner of the land in dispute; that her husband Karam Singh was married twice; that Karam Singh was survived by his two widows, namely, Kartar Kaur and Nihal Kaur; that Kartar Kaur was issueless; she was murdered on 6.9.1972 and FIR No.173 dated 6.9.1972 as registered at Police Station Kotkapura against Malkiat Singh and others, however, after trial, the accused were acquitted by learned Additional Sessions Judge, Faridkot vide judgment dated 26.3.1973; that there had been protracted litigation with regard to the land left by Kartar Kaur between Nihal Kaur, Baljit Singh and Jugraj Singh, the latter being dead, now survived by his widow Balbir Kaur and son Gurvinder Singh; that vide order dated 18.10.1976, the then Sub Divisional Magistrate, Faridkot directed that land measuring 170 Kanals, 6 marlas be kept attached during the pendency of the proceedings under Section 145 Cr.P.C.; that Jugraj Singh had filed a suit for declaration to the effect that he being legal heir of Kartar Kaur deceased was owner in possession of ½ share of 376 Kanals 18 Marlas land and a residential house on the basis of will

dated 15.2.1972 executed by Kartar Kaur in his favour; that the litigation has been going on between the parties since the year 1972, then in the meanwhile, Jugraj Singh died, however, before his death, he had made a statement in a pending suit in the Court of Civil Judge to the effect that Ujjagar Singh co-petitioner was in forcible possession of the suit land despite the order of attachment passed under Section 145(1) Cr.P.C. and as a matter of fact Ujjagar Singh and co-petitioners have been in possession of the suit land since 27.1.1973 as owners; that arbitration proceedings took place to resolve the dispute between the parties and an award was given, which acted upon, in terms of the award the legal heirs of deceased Jugraj Singh including respondents No.2 and 3 admitted the ownership and possession of the petitioners on the disputed land; formal agreement to sell was executed by legal heirs of late Jugraj Singh though the sale deeds had not actually been executed; that while receiving the total amount of Rs.5,70,000/-, Balbir Kaur and Gurvinder Singh had sold away land measuring 75 Kanals 8 Marlas from their share out of the entire suit property to the petitioners; that the petitioners had filed a revision petition against the order dated 8.12.2000 vide which Sub Divisional Magistrate, Faridkot instead of fixing the date of hearing in the petition filed by the petitioners had consigned the petition to the records; that on the basis of statement made by Balbir Kaur, the revision petition had been disposed of; that as per settlement between the parties, on 23.7.2002, Balbir Kaur and Gurvinder Singh had made statements that they had compromised the matter and admitted the Arbitral Award; they had stated before Sub Divisional Magistrate, Faridkot that since they had compromised by way of

arbitration so application under Section 145 Cr.P.C. be dismissed as withdrawn; that accordingly the proceedings were ordered to be dropped by Sub Divisional Magistrate, Faridkot vide order dated 9.8.2002, however, the final order now sought to be revived and reviewed at request of Balbir Kaur and Gurvinder Singh for handing over possession of land measuring 170 Kanals 6 Marlas to them is not permissible as it is not provided under the relevant provisions; the application was contested by the present petitioners, however, vide impugned order Sub Divisional Magistrate, Faridkot accepted the application and directed delivery of possession to Balbir Kaur and Gurvinder Singh; that order is being challenged. According to the petitioners, learned Sessions Judge, Faridkot has wrongly dismissed the revision petition filed by them against the impugned order passed by Sub Divisional Magistrate, Faridkot. It is contended that in furtherance of execution of the Arbitration Award, Balbir Kaur had even filed an application under Section 8 of Hindu Minority and Guardianship Act seeking permission to sell 1/5th share which was recorded in the name of Jugraj Singh and Kulwinder Kaur and the said application was allowed by learned Guardian Judge vide order dated 16.2.2005. Even Arbitrators had also filed written statement in the Court of learned District Judge, Faridkot acknowledging the passing of award by them with the express consent of the parties. However, due to increase in the price of land, private respondents started backing out of the Arbitration Award; that the khasra girdawaris have since been corrected in the name of petitioners and they are being reflected as owners in possession of land in question.

Notice of the petition was given to respondents, who put in

appearance through counsel.

This petition is being resisted by respondents No.2 and 3 in the written reply filed by them, it is contended that Kartar Kaur was father's sister of Jugraj Singh, who had executed a Will in his favour on 15.2.1972 bequeathing her entire property to Jugraj Singh; that Jugraj Singh had filed a suit for declaration that he is owner of the property, which was dismissed; that petitioner No.1 – Ujjagar Singh had also set up a Will dated 11.6.1972 in his favour said to have been executed by Kartar Kaur, however, that Will was also not accepted; that Jugraj Singh had filed an appeal challenging the judgment and decree passed by the Civil Court dismissing his suit; that Ujjagar Singh had also done so; that both the appeals came up for hearing before learned District Judge, Faridkot, who dismissed the appeal filed by Ujjagar Singh – petitioner No.1, whereas appeal filed by Jugraj Singh was allowed and the suit was decreed; that thereafter judgment and decree dated 8.2.1979 were challenged by Nihal Kaur, Gurdas Kaur and Preeto, first one being widow and last two being daughters of Karam Singh, born from the womb of Nihal Kaur; that Ujjagar Singh had also filed a regular second appeal; that during the pendency of appeal before learned District, Faridkot, the land in question was attached in proceedings under Section 145 Cr.P.C.; that both the regular second appeals have since been dismissed; that since Jugraj Singh had won the civil litigation, therefore, possession was to be delivered to him but it was not so done; that the petitioners had approached respondent No.2 to enter into Arbitration agreement on the basis of which Award was allegedly passed; that the present petition under Section 482 Cr.P.C. amounts to second revision

since the first revision petition has already been dismissed by learned Sessions Judge, Faridkot vide the impugned order, therefore second revision is clearly barred under the provisions of Cr.P.C.; that since the order has already been passed by Sub Divisional Magistrate, Faridkot, he has no jurisdiction to review the same; that Sub Divisional Magistrate, Faridkot has rightly ordered the receiver to hand over the possession of the land in dispute to the legal heirs of Jugraj Singh, who have been successful in civil proceedings; that symbolic possession has already been given by the concerned authorities by entering a rapat by the concerned Patwari and only physical possession is to be delivered; that civil suit filed by respondent No.3 has been decreed and Arbitration Award dated 21.3.2002 had been passed, so the petitioners cannot get any advantage; that the petitioners have no right to file the present petition challenging the order vide which the possession had been ordered to be handed over to private respondents. On merits, these very assertions had been reiterated while praying for dismissal of the petition.

I have heard learned counsel for the parties besides going through the record.

The first objection raised by learned counsel for the respondents No.2 and 3 is with regard to the maintainability of the present petition. According to them, since the revision petition filed by the present petitioners against the impugned order passed by Sub Divisional Magistrate, Faridkot has been dismissed, the present petition amounts to filing of second revision petition, which is clearly barred in terms of Section 399 Cr.P.C.

Whereas learned counsel for the petitioners has submitted

that the present petition is one under Section 482 Cr.P.C. which can certainly be not taken as second revision petition, therefore, this petition is maintainable.

I on my part feel that though second revision petition is not maintainable under law but a petition under Section 482 Cr.P.C. is quite distinguishable and cannot be taken as second revision petition. Section 482 Cr.P.C. deals with inherent powers of the High Court to make such order as may be necessary to give affect to any order under Cr.P.C. or to prevent abuse of process of any Court or otherwise to secure the ends of justice. Therefore, this power is quite distinct from the revisional power and the present petition can certainly be not taken as second revision petition, which may be barred under law.

Admittedly civil litigation had taken place between the parties. Learned counsel for the respondents has referred to judgment passed in Civil Suit No.327 of 9.10.2007 on 31.8.2012 by Civil Judge (Sr.Division), Faridkot. It was a case where Bahadur Singh, Nazar Singh, Ujjagar Singh, Surjit Singh, Mukhtiar Singh, Sardara Singh @ Saudagar Singh and Jagjit Singh, all sons of Jodha Singh son of Bara Singh, residents of village Sandhwan, Tehsil and District Faridkot had brought a suit for permanent injunction against Balbir Kaur, Gurvinder Singh, Jagroop Singh, Karamjit Singh, Shavinder Singh and Kulwinder Singh on the allegations that they have been in possession of one half share of the suit land since long, therefore, they have become owners by way of adverse possession. Plaintiffs Bahadur Singh, Surjit Singh, Mukhtiar Singh, Sardara Singh, Nazar Singh and Jagjit Singh had filed a suit for actual joint possession of the land measuring 188 kanals 15

marlas out of the entire suit land, wherein late Jugraj Singh has made a statement dated 20.3.1998 to the effect that Ujjagar Singh had been in possession of the suit land and since none of the parties was getting any benefit out of the litigation, they decided to get their dispute resolved by arbitration and accordingly vide writing dated 21.3.2002, Jarnail Singh, real brother of Balbir Kaur and maternal uncle of defendants No.2 and 3 was appointed as Arbitrator and in that agreement defendant No.3 had admitted the possession of the plaintiffs and that suit was contested by the defendants, wherein the trial Court in para Nos.11 and 12 had observed as under:

It is admitted case of the parties that the suit land was originally owned by Karam Singh, resident of village Sandhwan, who had two marriages and after his death his widows Kartar Kaur and Nihal Kaur became the owners of the suit property out of whom Kartar Kaur was issue-less and was murdered on 6.9.1972. It is alleged by the defendants that an FIR No.173 dated 6.9.1972 was registered with Police Station Kotkapura, against Malkiat Singh son of Preeto d/o Nihal Kaur and Surjit Singh s/o Gurdas Kaur d/o Nihal Kaur, who were challaned and prosecuted, but were acquitted vide judgment dated 26.2.1973 by Sh.Gurpartap Singh Chahal the then Ld. Additional Sessions Judge, Faridkot. It is further admitted case of the parties that after the death of Kartar Kaur, three different parties i.e. Nihal Kaur being co-widow and Baljit Singh & Ujjagar Singh present plaintiffs claimed her

inheritance on the basis of Will dated 11.6.1972, while the third party was Jugraj Singh predecessor-in-interest of defendants No.1 to 3, who on the basis of registered will dated 15.02.1972 claimed the inheritance of Kartar Kaur. It is also an admitted case of the parties that there arose a dispute between the aforesaid parties regarding ownership & possession of the property of Kartar Kaur, regarding which the Civil as well as Criminal cases were filed. Since there was a dispute regarding the possession of the suit property and as such, SHO P.S. Kotkapura fearing breach of peace recommended the imposition of Section 145 Cr.P.C. on the land in-dispute and the Sub Division Magistrate, Faridkot, referred the matter to Deputy Superintendent of Police for inquiry, which was entrusted to ASI Gurnam Singh, who submitted his report that all the three parties are taking the law into their hands and want to take forcible possession of the suit land and there being a danger of breach of peace and on the basis of this report dated 18.01.1973 of DSP, proceedings under Section 145 Cr.P.C. were imposed on the suit land and the land was attached by the order dated 02.07.1973 passed by the SDM, Faridkot, in which SHO P.S. Kotkapura, was appointed as receiver and the possession of suit land was delivered to him and that for the purpose of better management, the receiver SHO P.S. Kotkapura, gave the possession of the suit property to Baljit Singh brother of plaintiffs, who took

the possession of suit property under SHO P.S. Kotkapura receiver appointed by SDM and that during proceedings under Section 145 Cr.P.C. before the SDM, all the parties filed their affidavits and after the perusal of the said affidavits filed by the parties, the SDM passed the order dated 18.10.1976 holding therein that he has not been able to find out as to which party was in possession of the land in dispute within two months before the date of preliminary order and passed the order that the land in dispute will remain attached till the decision of a competent court determining the rights of parties entitled to possession. The case of the defendants further is that Jugraj Singh filed a Civil suit No.437-A of 06.10.1972/RT 109 of 25.06.1974, for declaration that he is the legal heir of Kartar Kaur deceased on the basis of registered will dated 15.02.1972 in his favour and as owner in possession of suit property, which suit was contested by Nihal Kaur as well as plaintiff Ujjagar Singh & others and the said suit of Jugraj Singh was dismissed by the trial Court and the said order was challenged and the appeal was accepted by Sh. M.L. Mirchia, the then Ld. District Judge, Faridkot, thereby declaring Jugraj Singh to be the owner in possession of suit land vide judgment & decree dated 08.02.1979. It is further their (defendants) case that said judgment/decree of the court of Ld. District Judge, Faridkot, was challenged by Nihal Kaur and Ujjagar Singh & others i.e. present

plaintiffs and the said appeal of Nihal Kaur etc. was dismissed by the Hon'ble High Court of Punjab & Haryana at Chandigarh on 28.04.1997.

The case of the defendants further is that after the death of Baljit Singh who was in possession of the suit property as Sapurdar under the Receiver SHO P.S. Kotkapura, the present plaintiffs illegally and by misrepresenting the facts got the Khasra girdawari of the suit property changed in their names, although they were never in possession of the suit same in their own rights and their alleged possession was under Baljit Singh, a Sapurdar under SHO P.S. Kotkapura the receiver. The case of the defendants further is that after the decision of the Hon'ble High Court, Jugraj Singh predecessor-in-interest of the defendants No.1 to 3, had died and at that time, Gurwinder Singh and his other brothers and sisters were minors, while Balbir Kaur defendant No.1 mother of defendant No.2 & 3, was illiterate lady, who did not know the intricacies of law, while the grandmother of Gurwinder Singh was an old and ailing lady, who died thereafter. It is also the case of the defendants that taking benefit of the minority of Gurwinder Singh and her brothers & sisters and the condition of her mother, the plaintiffs got an award passed by playing fraud and misrepresentation and the objection challenging the award have been filed and are pending in the court of Ld. Additional District Judge, Faridkot. Their case further is

that the suit land remained under attachment in proceedings under Section 145 Cr.P.C. and an application was moved by Gurwinder Singh to the SDM, Faridkot, for delivery of possession and the said application was allowed by SDM, Faridkot, vide order dated 14.07.2010 directing the receiver to deliver the possession of suit land to defendants No.1 to 3 and in pursuance of said order, the possession of the suit land was delivered to them (defendants No.1 to 3) and now they are owners in possession of the suit land and as such, no injunction can be granted against the true owners.

Para Nos.33 to 35 are also quite relevant and are being reproduced as under:

In view of the above discussion, it is clearly proved on record that after the death of Jugraj Singh who was held to be the owner of the suit land on the basis of registered will dated 15.02.1972 executed by Kartar Kaur in his favour, the possession of the suit land was ordered to be delivered to the defendants after disposal of the proceedings under Section 145 Cr.P.C. by the SDM, Faridkot Ex.D2 the order dated 14.07.2010 and the actual possession was delivered to Balbir Kaur etc. vide Rapat No.22 dated 20.07.2010 (Ex.D8). It has also been proved on record from the jambandi Ex.D11 to Ex.D15, the suit land was in possession of Baljit Singh son of Jodha Singh brother of plaintiffs as a Sapurdar under SHO P.S. Kotkapura, who

was appointed as receiver by the SDM, Faridkot on 18.10.1976 and there is no document whatsoever on the file, which may show that the present plaintiffs had been entered into the possession of suit land in their own right. It appears that after the death of Baljit Singh Sapurdar, the plaintiffs have occupied the suit land forcible without any right whatsoever and this fact has been clearly admitted by the plaintiff Ujjagar Singh in his cross-examination as already discussed above. He has clearly admitted that after the death of Kartar Kaur on 06.09.1972, they (plaintiffs) had started cultivating the suit land on their own and as such it is proved on record that they were never in possession of the suit land legally as per their own right.

So far as the claim of plaintiffs to be the owners of suit land on the basis of Arbitration Award dated 21.03.2002 Ex.P3 is concerned, the plaintiffs have not become owner of the suit land on the basis of Arbitration Award because the objection-petition filed by Gurwinder Singh etc. against the said Award is still pending in the court of learned Additional District Judge, Faridkot, for decision and the matter is still sub-judice.

In view of what has been discussed above, I am of the considered view that the plaintiffs have miserably failed to prove their possession over the suit land in their own right and the possession has already been got delivered to Balbir Kaur etc. on the basis of order dated 14.07.2010 of

the court of Ld. SDM, Faridkot, vide Rapat No.22 dated 20.07.2010 (Ex.D8) and as such, the plaintiffs are not entitled for the relief of permanent injunction against the true owners. I am further of the considered view that the suit filed by the plaintiffs is not at all maintainable. As such, Issue No.1 is decided accordingly against the plaintiffs and in favour of the defendants, whereas Issue No.2 is decided accordingly in favour of the defendants and against the plaintiffs.

That civil suit filed by the plaintiffs had been dismissed. The plaintiffs had preferred an appeal against that judgment, which was dismissed by Additional District Judge, Faridkot vide judgment dated 8.3.2017.

Although it is stated that RSA filed against that judgment is pending where notice of motion has been issued on 15.1.2018 but appeal has not yet been admitted. The findings of the civil Court are quite relevant and cannot be brushed aside.

Thus possession having been delivered in proceedings under Section 145 Cr.P.C., this petition under Section 482 Cr.P.C. has become infructuous and is doomed for failure. The same is dismissed accordingly.

(H.S.MADAAN)
JUDGE

14.5.2018

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No